

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

THOMAS POWER,

Plaintiff,

v.

HEWLETT-PACKARD COMPANY,

Defendant.

Civil Division

Docket No. 2:17-CV-00154-MRH

Hon. Mark R. Hornak

Friday, May 13, 2022

MOTION TO PRECLUDE TESTIMONY FROM WILLIAM F. KITZES, J.D.

Defendant, HP, Inc. (improperly named Hewlett-Packard Company in the plaintiff's complaint) moves to preclude the report and testimony of the plaintiff's expert, William F. Kitzes, J.D. As discussed in the accompanying memorandum of law, Kitzes' opinion that the HP Elitebook 8730w had a warning defect is based on speculation and conjecture. His opinion is not based on reliable principles, methods, or sufficient facts and data. Instead, Kitzes, who is admittedly not qualified concerning battery and computer science, is also unreliable: his work was limited to a search of documents that published on HP.com many years after the 8730w was manufactured. This is a willfully unreliable methodology that produced obviously irrelevant opinions—consistent with at least 20 other trial and appellate courts, including this Court and the Third Circuit Court of Appeals, that have excluded in whole or in part similar testimony by Kitzes' to that proffered here. Thus, Kitzes' proposed testimony fails to meet the requirements of Fed. R. Evid. 702 and must be excluded in accordance with *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). HP requests a *Daubert* hearing.

Wherefore, for the reasons set forth above and in its accompanying memorandum of law, HP, Inc., respectfully requests that the Court conduct a *Daubert* hearing and preclude the report

and testimony of William F. Kitzes, J.D. , in accordance with the Court's gatekeeping function to assure that expert testimony is reliable and in keeping with the requirements of Rule 702 and *Daubert*.

/s/ Michael A. Weiner

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Certificate of Service

I hereby certify that on May 13, 2022, a true and accurate copy of the foregoing motion was served via the Court's Electronic Case Filing System to all counsel of record.

/s/ Michael A. Weiner

Michael A. Weiner